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16 CATHAY BANK

17 **UNITED STATES BANKRUPTCY COURT**

18 **DISTRICT OF NEVADA**

19 IN RE:

20 MARTIFER AURORA SOLAR, LLC, a
21 Nevada limited liability company,

- 22 Affects Martifer Aurora Solar, LLC
23 Affects Martifer Solar USA, Inc.
24 Affects All Debtors

25 Case No. BK-S-14-10355-abl
26 and BK-S-14-10357-abl

27 Jointly Administered under
28 Case No. BK-S-14-10355-abl

SECURED CREDITOR CATHAY
29 BANK'S STATEMENT OF
30 OBJECTIONS TO DEBTORS'
31 PROPOSED INTERIM ORDER
32 PURSUANT TO 11 U.S.C. §§ 361, 362
33 AND 363 AND FED. R. BANKR. P.
34 4001(b) and 4001(d): (I)
35 AUTHORIZING DEBTORS TO USE
36 CASH COLLATERAL AND
37 PROVIDE ADEQUATE
38 PROTECTION; (II) GRANTING
39 RELATED RELIEF; AND (III)
40 SCHEDULING FINAL HEARING

41 Pursuant to Local Rule 9021(b)(2)(A), secured creditor Cathay Bank (the "Bank") hereby

1 files the following objections and proposed alternatives to the Debtors' Martifer Aurora Solar,
 2 LLC's ("Aurora") and Martifer Solar USA, Inc.'s Interim Order Pursuant to 11 U.S.C. §§ 361,
 3 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing Debtors to Use Cash
 4 Collateral and Provide Adequate Protection; (II) Granting Related Relief; and (III) Scheduling
 5 Final Hearing (the "Proposed Order"):

6 **A. PERTINENT PROCEDURAL AND FACTUAL HISTORY**

7 1. On January 24, 2014, Debtor Martifer Aurora Solar, LLC filed its Motion for
 8 Interim and Final Order Pursuant To 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P.
 9 4001(b) and 4001(d): (I) Authorizing Debtors To Use Cash Collateral and Provide Adequate
 10 Protection; (III) Granting Related Relief; and (III) Scheduling Final Hearing [Dkt. 25] and on
 11 January 23, 2014, Debtor Martifer Solar USA, Inc. filed its Motion for Interim and Final Order
 12 Pursuant To 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I)
 13 Authorizing Debtors To Use Cash Collateral and Provide Adequate Protection; (III) Granting
 14 Related Relief; and (III) Scheduling Final Hearing [Dkt. 24] (the "Motions").

15 2. On January 28, 2014, the Court held a hearing on the Motions on order shortening
 16 time.

17 3. Subsequently thereafter, at 6:52 p.m. on Wednesday, January 29, 2014, Debtors'
 18 counsel transmitted a proposed order for review (the "Proposed Order"). *See* the Declaration of
 19 Natalie Cox filed concurrently herewith (the "Cox Declaration") and a copy of the transmission
 20 email attached thereto as Exhibit 1.

21 4. After numerous email exchanges between the Bank's counsel and the Debtors'
 22 counsel as to the form of the proposed order, counsel were unable to resolve their differences as
 23 to whether the proposed order accurately reflected the ruling of the Court. *See* copies of the
 24 emails attached to the Cox Declaration.

25 **B. OBJECTIONS**

26 Local Rule 9021 provides a party who disagrees that a proposed order accurately reflects
 27 the ruling of the Court to have such disapproval noted on the lodged proposed order and five (5)
 28 business days from the date of receipt of the proposed order to submit to the Court a detailed

1 statement of objections and an alternate proposed order. *See* LR 9021(b)(2) and (3). Having
2 received the Debtors' Proposed Order on January 29, 2014, Cathay Bank has up to and including
3 February 5, 2014 to submit its detailed objections to the Proposed Orders and to submit its'
4 proposed alternate. Each of the Bank's objections are set forth below.

**1. THE DEBTORS' SUBMISSION OF A BUDGET NOT IN EVIDENCE IS
INAPPROPRIATE AND WAS NOT PART OF THE COURT'S ORDER.**

The Bank objects to the Debtors' surreptitious incorporation of, and reliance upon, a revised, joint budget attached to the Debtors' Proposed Order as Exhibit A. Specifically, the Bank objects to the Debtors' suggestion at pgs. 6-7, paragraph 4 of the Proposed Order that the Court's decision is supported by a budget not previously submitted into evidence or even referenced in the Debtors' moving papers prior to the January 28, 2014 hearing. Paragraph four of the Order states:

4. All use of the Pre-Petition Lender's Cash Collateral shall be subject to compliance with, in addition to this Interim Order, the **Initial Cash Budget, as modified at the hearing and attached hereto as Exhibit A (the "Interim Cash Budget")**; provided, however, that compliance with the Interim Cash Budget shall be deemed satisfied if the actual aggregate expenditures the period comprising weeks two through eight (the "Interim Period") do not exceed the aggregate budgeted amount for such Interim Period as set forth in the Interim Cash Budget. The Interim Cash Budget may be modified with the written consent of both Debtors and the Pre-Petition Lender, respectively, without the need for Court approval.(Emphasis added).

20 The budget attached as Exhibit A to the Proposed Order is not the 13-week budget
21 submitted with the Debtors' moving papers or submitted into evidence at the January 28, 2014
22 hearing, nor the budget upon which the Court relied in granting the Debtors' use of the Bank's
23 cash collateral. The 13-week budget did not include any line items for Debtor Aurora, and more
24 importantly, included two (2) payments of \$57,768 to the Bank. A copy of the 13-week Budget
25 is attached hereto as **Exhibit 1** for reference and also appears in the docket at [Dkt. 24, Exhibit 2
26 and Dkt. 25, Exhibit 2]. The "new budget" attached to Debtors' Proposed Order purports to be a
27 joint budget and cuts in nearly half (1/2) the budgeted amount of payments to the Bank to just
28 \$26,258 each.

1 It is apparent from the Court's own statements from the January 28, 2014 hearing, that
 2 the Court was relying on the 13-week budget, not the newly submitted budget. In fact, the Court
 3 specifically limited the Debtors' use of the Bank's cash collateral to that stated in the 13-week
 4 budget as follows:

5 Third, the amount of cash collateral authorized to be used during
 6 the interim period shall not exceed the total operating
 7 disbursements in weeks 2 through 8 of the debtor's 13-week cash
 flow projection budget.

8 See Transcript of January 28, 2014 hearing attached hereto as **Exhibit 2**, pg. 8, lns. 22-25. To
 9 include a completely different budget that adds a line item for Aurora and alters payments to the
 10 Bank is inappropriate and should not included in the Court's written Order.

11 2. **THE COURT DID NOT GRANT THE DEBTORS A \$2 MILLION CARVE-**
OUT THAT WOULD ALLOW THE DEBTORS TO PAY THE
PROFESSIONALS EXCLUSIVELY DURING THE INTERIM PERIOD
AND THAT WOULD PRIME CATHAY BANK'S REPLACEMENT AND
SUPERPRIORITY LIENS.

14 The Bank objects to the Debtors' assertions that the Court granted the \$2 million "Carve-
 15 Out." In particular, the Bank objects to the language set forth in the following sections of the
 16 Proposed Order:

17 a. pg. 6, paragraph 2:

18 2. From the Petition Date through the Termination
 19 Date (as hereinafter defined), Debtors shall be permitted to use the
 20 Pre-Petition Lender's Cash Collateral according to the terms of this
 21 Interim Order. Debtors shall have no right to use the Pre-Petition
 22 Lender's Cash Collateral after the occurrence and during the
 23 continuance of any Event of Default (as hereinafter defined),
 24 except as provided herein with respect to the Carve-Out (as
 25 hereinafter defined). (emphasis added).

26 b. pg. 7, paragraph 5, subsections (b) and (c):

27 (5)(b) replacement liens to secure the amount of any Value
 28 Diminution (the "Replacement Liens"), [] which Replacement
 Liens shall: (i) **be subject and junior only to the Carve-Out**
(defined below), and any Prior Liens, [] (ii) attach to the Cathay
 Collateral as of the Petition Date and any other assets of Debtors
 that are subject to a valid and perfected lien as of the Petition Date,
 any other previously unencumbered assets of Debtors, and any
 proceeds of the foregoing, and (iii) be in addition to the Pre-
 Petition Lender's Claims and liens; and

(c) to the extent permitted by Bankruptcy Code section 507(b), a superpriority claim (the “Pre-Petition Lender’s Superpriority Claim”) against Debtors’ estates, **subject and junior only to the Carve-Out.** (Emphasis added).

d. pg. 8, paragraph 6 in its entirety:

6. All claims and liens of the Pre-Petition Lender, including, without limitation, the Replacement Liens and the Pre-Petition Lender's Superpriority Claims, shall be subject to carve-out(the "Carve-Out") from its liens and claims, including, without limitation, the Replacement Liens, the Pre-Petition Lender's Claims, and the Pre-Petition Lender's Superpriority Claim, for (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 § U.S.C. 1930, and (ii) only to the extent the amounts are not available under the Cash Budget, an amount not exceeding two million dollars (\$2,000,000) in the aggregate, which amount may be used after the occurrence and during the continuation of an Event of Default (defined below), to pay the fees and expenses of professionals retained by Debtors and any statutory committee and allowed (or allowable) by the Bankruptcy Court (as to which allowed or allowable fees and expenses the Pre-Petition Lender waives any right to seek disgorgement); provided, however, that (x) Debtors shall be permitted to pay compensation and reimbursement of expenses allowed, allowable or otherwise authorized by the Bankruptcy Court and payable under Bankruptcy Code sections 330 and 331 in accordance with the **Interim** Cash Budget; (y) the Carve-Out shall not be reduced by the amount of any compensation and reimbursement of expenses paid or incurred (to the extent ultimately allowed or allowable by the Bankruptcy Court) prior to the occurrence of an Event of Default in respect of which the Carve-Out is invoked; and (z) the Pre-Petition Lender waive any right to seek disgorgement thereof; and provided, further, that nothing herein shall be construed to impair the ability of the Pre-Petition Lender to object to the reasonableness of any of the fees, expenses, reimbursement or compensation sought by the professionals retained by Debtors or any statutory committee.

e. pg. 10, paragraph 10:

10. Notwithstanding an Event of Default, any amounts that have been disbursed in accordance with the Interim Cash Budget and/or **the Carve-Out** shall not be subject to disgorgement in favor of the Pre-Petition Lender absent a finding of mistaken payment, bad faith or fraud. (Emphasis added).

25 The Debtors' refusal—despite repeated requests and objections by Cathay Bank and the
26 US Trustee—to remove the language from the proposed Order imposing a \$2 million "carve-
27 out" (surcharge) which results in the forcible subordination of Cathay Bank's prepetition liens
28 and post-petition replacement liens to \$ 2 Million in future estate administrative expenses

1 (attorney's fees) is tantamount to bad faith. The Court did NOT order such a "surcharge/carve-
 2 out" regarding the replacement liens granted for the use of the Bank's cash collateral, and the
 3 concept of a subordination of the Bank's Pre-Petition liens to \$2 Million in administrative
 4 expenses (attorneys' fees) was never even discussed at the hearing.

5 Regardless, the Court should not (indeed cannot) subordinate the Bank's prepetition
 6 security interests and post-petition replacement liens to administrative expenses that have not yet
 7 been incurred or allowed, and which have not been the subject of a duly noticed "surcharge"
 8 motion under section 506(c) of the Bankruptcy Code, or a duly noticed request for a "priming
 9 lien" under section 364(d), in favor of "future" administrative expenses to be incurred by
 10 professionals who have not yet even filed employment applications with the Court. Cathay Bank
 11 objects to the inclusion of any language whatsoever regarding the proposed "carve-out"
 12 (surcharge) discussed in the Motion.

13 The inappropriateness of the Carve-Out language in the Proposed Orders is magnified by
 14 the literal reading of the Debtors' proposed Carve-Out language which would entitle the Debtors
 15 to use the Bank's cash collateral to pay the entire amount budgeted for weeks 2-8, up to \$2
 16 million, on professionals – not necessarily on any of the specific items, such as utilities, cited in
 17 the 13-week budget. Such a result certainly does not satisfy the requirements of Federal Rule of
 18 Bankruptcy Procedure 4001(b)(2) which limits the interim relief to such relief as is necessary to
 19 avoid immediate and irreparable harm to the estate pending a final hearing. *See* BR 4001(b)(2)
 20 and the Transcript of the 3 pm hearing on January 28, 2014, pg. 5, lns. 11-17, ("However, if the
 21 Court does authorize the use of cash collateral, it may authorize the use only of that amount -- try
 22 again -- it may authorize the use of only that amount of such cash collateral as is necessary to
 23 avoid immediate and irreparable harm to the estate pending a final hearing. Federal Rule of
 24 Bankruptcy Procedure 4001(b)(2) says so. That's how I know."). As drafted, the carve-out
 25 sections ensures that the Debtors' professionals will be the only parties receiving payment before
 26 the Debtors' go out of business and liquidation ensues. There is no doubt from the record that
 27 this is not the Court's intended result.

28 Likewise, the record does not reflect that the Court also intended to subordinate the

1 Bank's adequate protection in the form of replacement and superpriority liens to the \$2 million
2 Carve-Out. In fact, the Court ruled (at transcript p. 8, line 1) that there would be "no priming"
3 resulting from the Court's Order. There simply is nothing in the Court's oral pronouncement, the
4 record, or pertinent law that support such harsh treatment of the Bank. Thus, such language
5 should not be included in the Court's written Order.

3. PROPOSED ORDER

The Bank proposes as an alternative, the proposed order attached hereto as **Exhibit 3 (the "Alternative Order")**. The form and substance of this alternative Order has been approved by the Office of the United States Trustee as reflective of the Court's rulings from the bench on January 28, 2014. *See* the Cox Declaration.

C. CONCLUSION

For each of the foregoing reasons, the Bank respectfully requests that the Alternative Order be entered instead of the Order proposed by the Debtor.

DATED this 5th day of February, 2014.

KOLESAR & LEATHAM.

By:/s/ *Natalie M. Cox, Esq.*

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EXHIBIT 1

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Martifer Solar USA, Inc.
13 Week Cash Flow Projections

Week #	1 1/21/14	2 1/27/14	3 2/3/14	4 2/10/14	5 2/17/14	6 2/24/14	7 3/3/14	8 3/10/14	9 3/17/14	10 3/24/14	11 3/31/14	12 4/7/14	13 4/14/14	Totals	[1]	
Cash Receipts (Legacy)	\$ -	\$ 8,721	\$ -	\$ 47,547	\$ 283,151	\$ 910,741	\$ -	\$ -	\$ -	\$ 1,647,404	\$ -	\$ -	\$ -	\$ 2,897,564	[2]	
Cash Receipts (New Busi.)	-	-	-	-	-	-	-	-	-	615,000	-	-	-	675,000	[3]	
Total Cash Receipts	-	8,721	-	47,547	283,151	910,741	-	-	-	-	2,262,404	-	-	60,000	3,572,564	
Direct Materials + Subs (Legacy)	-	55,000	38,038	133,151	-	1,009,886	-	-	-	-	741,669	-	-	-	1,977,743	[2]
Direct Materials + Subs (New Busi.)	-	350,000	-	-	-	114,350	-	10,000	5,000	25,000	630,000	15,000	5,000	1,154,350	3,132,093	
Total Dir. Mat. Disbursements	-	405,000	38,038	133,151	-	1,124,236	-	10,000	5,000	25,000	1,371,669	15,000	5,000	-	-	
Payroll	161,176	-	161,176	-	161,176	-	161,176	-	161,176	-	161,176	-	161,176	1,128,234	[4]	
Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Insurance	-	43,500	-	-	-	43,500	-	-	-	-	43,500	-	-	-	130,500	
Expense Reimbursements	-	36,000	-	-	-	36,000	-	-	-	-	36,000	-	-	-	108,000	
Fuel	-	3,700	-	-	-	3,700	-	-	-	-	3,700	-	-	-	11,100	
Rent	-	22,050	-	-	-	22,050	-	-	-	-	22,050	-	-	-	66,150	
Utilities	-	12,000	-	-	-	12,000	-	-	-	-	12,000	-	-	-	36,000	
Other Expenses	-	-	12,000	-	-	12,000	-	-	-	-	12,000	-	-	-	36,000	
IT Services	-	10,300	-	-	-	10,300	-	-	-	-	10,300	-	-	-	30,900	
Outside Services	-	-	38,000	-	-	38,000	-	-	-	-	38,000	-	-	-	114,000	
Vehicle Leases	-	-	8,250	-	-	8,250	-	-	-	-	8,250	-	-	-	24,750	
Contingency	-	7,500	7,500	132,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	215,000	[5]	
Total Operating Disbursements	161,176	131,350	230,626	132,500	168,676	131,350	230,626	7,500	168,676	131,350	230,626	7,500	168,676	1,900,634		
Net Operating Cash Flows	(161,176)	(527,629)	(268,664)	(218,104)	114,475	(344,845)	(230,626)	(17,500)	(173,676)	(156,350)	660,109	(22,500)	(113,676)	(1,460,164)		
Debtor's Legal Fees (Ch.11)	-	-	-	-	-	-	-	-	-	-	-	-	-	370,000	370,000	
Debtor's FA Fees (Ch. 11)	-	-	-	-	-	-	-	-	-	-	-	-	-	75,000	75,000	
Debtor's IB Fees (Ch. 11)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	[6]	
Debtor's Legal Fees (Other)	-	-	-	-	-	-	-	-	-	-	-	-	-	245,000	245,000	
Committee's Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	50,000	50,000	
Chapter 11 UST Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	6,500	6,500	
Total Professional Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	746,500	[7]	
Interest Expense- Secured Debt	-	57,768	-	-	57,768	-	-	-	-	57,768	-	-	-	-	173,305	[8]
Net Cash Flow Before DIP Draws	(161,176)	(585,398)	(268,664)	(218,104)	114,475	(402,613)	(230,626)	(17,500)	(173,676)	(214,118)	660,109	(22,500)	(860,176)	(2,379,969)		
Beginning Cash	505,700	505,700	220,302	211,638	268,534	383,009	264,746	264,119	256,619	262,943	263,825	923,934	901,434	505,700	[9]	
DIP Facility Draws	161,176	300,000	260,000	275,000	-	284,350	230,000	10,000	180,000	215,000	-	-	160,000	2,075,526	[10]	
Net Ending Cash	\$ 505,700	\$ 220,302	\$ 211,638	\$ 268,534	\$ 383,009	\$ 264,746	\$ 264,119	\$ 256,619	\$ 262,943	\$ 263,825	\$ 923,934	\$ 901,434	\$ 201,257	\$ 201,257		

Notes:

- [1] All dates represent the beginning Monday, except for Week 1, the beginning of which is the Petition Date
- [2] Martifer restructured its sales team in December 2013 with a mandate that all new contracts generate positive cash flows. "Legacy" business represents those contracts in place prior to this restructuring
- [3] While all new business has been calculated as cash flow positive, contracts typically require initial cash outlays up to several months prior to recognition of cash receipts, as is common industry practice
- [4] Week 1 payroll is assumed to be paid through the DIP Facility (i.e. Martifer Solar, Inc. as DIP Lender) in advance of finalization of the DIP Facility loan agreement
- [5] Assumes amounts due to critical vendors of approximately \$125,000 are paid by Week 4 pursuant to Section 105 or other provisions of the Bankruptcy Code
- [6] Investment Banking fees of \$300,000 contemplates a potential exit financing transaction. Should this transaction not materialize within this budget period, such corresponding fees will not be paid
- [7] Professionals' monthly invoices are assumed to be paid at 80% of fees and 100% of expenses (for January 2014 through March 2014 invoices). The 20% holdbacks are assumed to be paid upon Plan Confirmation.
- [8] Assumes default interest rate at 11% per annum based on a principal balance of \$6.3 million
- [9] Beginning cash balance per the Debtor cash balance as of 1/21/14.
- [10] DIP Facility draws relate to a pending Debtor in Position facility. All related interest is accrued. Draws on the DIP Facility are projected for any week in which the cash balance is projected to drop below \$200,000

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Martifer Solar USA, Inc.
13 Week Cash Flow Projections

Week #	1 1/21/14	2 1/27/14	3 2/3/14	4 2/10/14	5 2/17/14	6 2/24/14	7 3/3/14	8 3/10/14	9 3/17/14	10 3/24/14	11 3/31/14	12 4/7/14	13 4/14/14	Totals [1]
Cash Receipts (Legacy)	\$ -	\$ 8,721	\$ -	\$ 47,547	\$ 283,151	\$ 910,741	\$ -	\$ -	\$ -	\$ 1,647,404	\$ -	\$ -	\$ -	\$ 2,897,564 [2]
Cash Receipts (New Busi.)											\$ 615,000			\$ 675,000 [3]
Total Cash Receipts	-	8,721	-	47,547	283,151	910,741	-	-	-	-	2,262,404	-	-	60,000 [4]
Direct Materials + Subs (Legacy)	-	55,000	38,038	133,151	-	1,009,886	-	-	-	-	741,669	-	-	1,977,743 [2]
Direct Materials + Subs (New Busi.)	-	350,000	-	-	-	114,350	-	10,000	5,000	25,000	630,000	15,000	5,000	1,154,350 [3]
Total Dir. Mat. Disbursements	-	405,000	38,038	133,151	-	1,124,236	-	10,000	5,000	25,000	1,371,669	15,000	5,000	3,132,093 [4]
Payroll	161,176	-	161,176	-	161,176	-	161,176	-	161,176	-	161,176	-	161,176	1,128,234 [4]
Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Insurance	-	43,500	-	-	-	43,500	-	-	-	-	43,500	-	-	130,500
Expense Reimbursements	-	36,000	-	-	-	36,000	-	-	-	-	36,000	-	-	108,000
Fuel	-	-	3,700	-	-	-	3,700	-	-	-	3,700	-	-	11,100
Rent	-	22,050	-	-	-	22,050	-	-	-	-	22,050	-	-	66,150
Utilities	-	12,000	-	-	-	12,000	-	-	-	-	12,000	-	-	36,000
Other Expenses	-	-	12,000	-	-	-	12,000	-	-	-	12,000	-	-	36,000
IT Services	-	10,300	-	-	-	10,300	-	-	-	-	10,300	-	-	30,900
Outside Services	-	-	38,000	-	-	-	38,000	-	-	-	38,000	-	-	114,000
Vehicle Leases	-	-	8,250	-	-	-	8,250	-	-	-	8,250	-	-	24,750
Contingency	-	7,500	7,500	132,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	215,000 [5]
Total Operating Disbursements	161,176	131,350	230,626	132,500	168,676	131,350	230,626	7,500	168,676	131,350	230,626	7,500	168,676	1,900,634
Net Operating Cash Flows	(161,176)	(527,629)	(268,664)	(218,104)	114,475	(344,845)	(230,626)	(17,500)	(173,676)	(156,350)	660,109	(22,500)	(113,676)	(1,460,164)
Debtor's Legal Fees (Ch.11)	-	-	-	-	-	-	-	-	-	-	-	-	-	370,000 370,000
Debtor's FA Fees (Ch. 11)	-	-	-	-	-	-	-	-	-	-	-	-	-	75,000 75,000
Debtor's IB Fees (Ch. 11)	-	-	-	-	-	-	-	-	-	-	-	-	-	[6]
Debtor's Legal Fees (Other)	-	-	-	-	-	-	-	-	-	-	-	-	-	245,000 245,000
Committee's Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	50,000 50,000
Chapter 11 UST Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	6,500 6,500
Total Professional Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	746,500 [7]
Interest Expense- Secured Debt	-	57,768	-	-	-	57,768	-	-	-	-	57,768	-	-	173,305 [8]
Net Cash Flow Before DIP Draws	(161,176)	(585,398)	(268,664)	(218,104)	114,475	(402,613)	(230,626)	(17,500)	(173,676)	(214,118)	660,109	(22,500)	(860,176)	(2,379,969)
Beginning Cash	505,700	505,700	220,302	211,638	268,534	383,009	264,746	264,119	256,619	262,943	263,825	923,934	901,434	505,700 [9]
DIP Facility Draws	161,176	300,000	260,000	275,000	-	284,350	230,000	10,000	180,000	215,000	-	-	160,000	2,075,526 [10]
Net Ending Cash	\$ 505,700	\$ 220,302	\$ 211,638	\$ 268,534	\$ 383,009	\$ 264,746	\$ 264,119	\$ 256,619	\$ 262,943	\$ 263,825	\$ 923,934	\$ 901,434	\$ 201,257	\$ 201,257

Notes:

- [1] All dates represent the beginning Monday, except for Week 1, the beginning of which is the Petition Date
- [2] Martifer restructured its sales team in December 2013 with a mandate that all new contracts generate positive cash flows. "Legacy" business represents those contracts in place prior to this restructuring
- [3] While all new business has been calculated as cash flow positive, contracts typically require initial cash outlays up to several months prior to recognition of cash receipts, as is common industry practice
- [4] Week 1 payroll is assumed to be paid through the DIP Facility (i.e. Martifer Solar, Inc. as DIP Lender) in advance of finalization of the DIP Facility loan agreement
- [5] Assumes amounts due to critical vendors of approximately \$125,000 are paid by Week 4 pursuant to Section 105 or other provisions of the Bankruptcy Code
- [6] Investment Banking fees of \$300,000 contemplates a potential exit financing transaction. Should this transaction not materialize within this budget period, such corresponding fees will not be paid
- [7] Professionals' monthly invoices are assumed to be paid at 80% of fees and 100% of expenses (for January 2014 through March 2014 invoices). The 20% holdbacks are assumed to be paid upon Plan Confirmation.
- [8] Assumes default interest rate at 11% per annum based on a principal balance of \$6.3 million
- [9] Beginning cash balance per the Debtor cash balance as of 1/21/14.
- [10] DIP Facility draws relate to a pending Debtor in Position facility. All related interest is accrued. Draws on the DIP Facility are projected for any week in which the cash balance is projected to drop below \$200,000

Printed: Jan 23, 2014

EXHIBIT 2

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 LAS VEGAS, NEVADA

4 In re: MARTIFER SOLAR USA, INC.,) E-Filed: 01/30/14
5 Debtor.)
6 _____) Case No.
7 In re: MARTIFER AURORA SOLAR, LLC,) BK-S-14-10357-ABL
8 Debtor.) Chapter 11
9 _____))
10 MARTIFER AURORA SOLAR, LLC, et al.,)
11 Plaintiffs,)
12 vs.) Adversary No.
13 CATHAY BANK,) BK-S-14-01014-ABL
14 Defendant.)
15 _____)

16 PARTIAL TRANSCRIPT OF PROCEEDINGS

17 OF

JUDGE'S RULING

VOLUME 1

18 BEFORE THE HONORABLE AUGUST B. LANDIS
UNITED STATES BANKRUPTCY JUDGE

19 Tuesday, January 28, 2014

20 9:30 a.m.

21
22
23 Court Recorder: Helen Smith

24 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

1 APPEARANCES:

2 For Martifer Solar BRETT A. AXELROD, ESQ.
USA, Inc., and NATHAN SCHULTZ, ESQ. (phonetic)
3 Martifer Aurora Fox Rothschild, LLP
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5 For Cathay Bank: NATALIE M. COX, ESQ.
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8 REED S. WADDELL, ESQ.
9 MICHAEL G. FLETCHER, ESQ.
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15 For Martifer Solar, SAMUEL A. SCHWARTZ, ESQ.
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17 Also Present: KLAUS BERNHARDT (phonetic)
18 ROLAND KISER (phonetic)
19 AVI MUNTAR (phonetic)
JAMES WONG (phonetic)
20 PEDRO PEREIRA (phonetic)

21

22

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24

25

1 (Court reconvened at 03:02:16 p.m.)

2 THE CLERK: Bankruptcy court is back in session.

3 THE COURT: Have a seat.

4 (Colloquy not on the record.)

5 THE COURT: We're back on the record in the
6 matters of in re Martifer Solar USA, Inc., Chapter 11
7 Case No. 14-10357, and I'll try my best to say USA when I refer
8 to that case.

9 The second is in re Martifer Aurora Solar, LLC,
10 Chapter 11 No. 14-10355 -- I'll refer to that case as Aurora --
11 and Martifer Aurora Solar, LLC, versus Cathay Bank,
12 Adversary No. 14-01014, and I'll talk about that as the
13 adversary.

14 We had arguments and evidence presented this morning. The
15 matters before the Court remaining for resolution are the
16 following: Debtors' separate motions for interim and final
17 order pursuant to 11, USC, Section 361, 362, and 363, and
18 Federal Rule of Bankruptcy Procedure 4001(b) and 4001(d),
19 Roman numeral I, authorizing debtors to use cash collateral and
20 provide adequate protection, Roman numeral II, granting related
21 relief, and Roman number III, scheduling final hearing -- I'll
22 refer to those in the collective as the cash collateral
23 motions -- and opposition thereto by Cathay Bank and the
24 United States Trustee for Region 17.

25 Second, USA's motion for an order, one, prohibiting utility

1 providers from altering, refusing, or discontinuing service,
2 two, authorizing ordinary course payments to utility providers,
3 three, deeming utility providers adequately assured of future
4 performance, and, four, establishing procedures for determining
5 requests for additional adequate assurance and the limited
6 oppositions thereto. I'll call that the utilities motion.

7 Third, Debtors' separate motions for order pursuant to
8 11, USC, Section 364 and Federal Rule of Bankruptcy Procedure
9 4001(c), Roman numeral I, authorizing debtors to obtain
10 postpetition financing, Roman numeral II, granting related
11 relief, and, Roman numeral III, scheduling final hearing. I'll
12 refer to those in the collective as the DIP financing motions.

13 And last, a motion for temporary restraining order and
14 order to show cause why a preliminary injunction should not
15 issue the TRO motion.

16 The Court has concluded that it has jurisdiction over the
17 debtors' Chapter 11 reorganization cases and the adversary
18 proceeding pursuant to 28, USC, Section 1334, 28, USC,
19 Section 157(a), and U.S. District Court Local Rule 1001(b)(1).

20 As to the motions pending before the Court, the Court
21 concludes that the cash collateral motions are core proceedings
22 pursuant to 28, USC, Section 157(b)(2)(A) and (M).

23 The utilities motion is a core proceeding pursuant to
24 28, USC, Section 157(b)(2)(A) and (O). The DIP financing
25 motions are core proceedings pursuant to 28, USC,

1 Section 157(b) (2) (A) and (D), and the TRO motion is a core
2 proceeding pursuant to 28, USC, Section 157(b) (2) (A) and (O).

3 We'll address the cash collateral motions first. The
4 cash collateral motions were filed on January 23rd in the USA
5 case, Docket Entry No. 24, and January 24th in Aurora,
6 Docket Entry No. 25.

7 Today's preliminary hearing was held at the debtors'
8 request less than 14 days from the date when the cash
9 collateral motions were served.

10 Today's preliminary hearing is authorized pursuant to
11 Federal Rule of Bankruptcy Procedure 4001(b) (2). However, if
12 the Court does authorize the use of cash collateral, it may
13 authorize the use only of that amount -- try again -- it may
14 authorize the use of only that amount of such cash collateral
15 as is necessary to avoid immediate and irreparable harm to the
16 estate pending a final hearing. Federal Rule of Bankruptcy
17 Procedure 4001(b) (2) says so. That's how I know.

18 As debtors in possession, the debtors are authorized to
19 operate their respective businesses under the bankruptcy code,
20 under Section 1108 of the bankruptcy code.

21 The bankruptcy code provides that a debtor in possession
22 may use cash collateral only with the secured creditor's
23 consent or if the Court after notice and hearing authorizes
24 such use, and you can see there at Section 363(c) (2) of the
25 bankruptcy code.

1 Absent consent, Courts look to whether a secured creditor
2 has adequate protection of its interest in cash collateral as
3 the condition to authorizing its use. Section 363(e) provides
4 that.

5 You can also read United Savings Association versus
6 Timbers of Inwood Forest Association, 484 U.S. 365 at 369
7 through 73 back in 1988.

8 In addition, Section 362(d)(1) enables a party with an
9 interest in property of the estate such as cash collateral
10 to obtain relief from the automatic stay if there ultimately
11 proves to be a lack of adequate protection. See
12 Section 362(d)(1).

13 Based upon the record that was presented at the hearings
14 this morning, the arguments of counsel, the Court concludes
15 that the debtors have carried their burden of proving the need
16 to use cash collateral due to the scope of the secured claim
17 held by Secured Creditor Cathay Bank.

18 The Court finds that the record before it establishes
19 plainly that Secured Creditor Cathay Bank does not consent to
20 the use of its cash collateral. As a result, debtors can only
21 use Cathay Bank's cash collateral if the Court authorizes the
22 debtors to do so.

23 So the crux of the issue today is a straightforward one
24 almost. It's whether Cathay Bank's interest in cash collateral
25 has been afforded adequate protection through the proposal

1 embodied in the cash collateral motions and the proposed order.

2 The term "adequate protection" is not defined in the
3 bankruptcy code, but Section 361 does provide three
4 nonexclusive examples of how adequate protection may be
5 provided in a cash collateral context.

6 First, requiring the debtor in possession to make a cash
7 payment or periodic cash payments to the affected secured
8 creditor to the extent the use of cash collateral results in a
9 decrease in the value of the secured creditor's interest.

10 Second, providing the secured creditor with an additional
11 replacement lien to the affected secured creditor to the extent
12 the use of cash collateral results in a decrease in the value
13 of the secured creditor's interest.

14 And last, otherwise fashioning a method of providing a
15 creditor with the indubitable equivalent of its interest in
16 cash collateral.

17 Based upon the record before it developed in the hearing
18 this morning, the Court concludes that the debtors' cash
19 collateral motions do afford sufficient adequate protection to
20 Cathay Bank to allow the debtors to use cash collateral on an
21 interim basis pending a final hearing.

22 The Court finds that the motions provide for adequate
23 protection payments as detailed in the budget. The Court finds
24 that the motion provides for replacement liens. The Court
25 finds that the cash collateral motions provide for the

1 prepetition lender's superpriority claim. No priming here.

2 Most importantly, Cathay's secured claim is protected by a
3 substantial equity cushion of not less than 20 percent
4 depending on the valuation method that you use. Those findings
5 are substantiated by the declarations that were admitted into
6 evidence this morning.

7 Case law has almost uniformly held that an equity cushion
8 of 20 percent or more constitutes adequate protection.

9 Suntrust Bank versus Den-Mark Construction, Inc., in re
10 Den-Mark Construction, Inc., 406 Bankruptcy Reporter 683,
11 700 at note 24 from the Eastern District of North Carolina at
12 2009, citing James River Associates, 148 Bankruptcy Reporter
13 790, 796, out of the Eastern District of Virginia, 1992.

14 The Court therefore concludes that the relief requested in
15 the cash collateral motions is appropriate and will be granted
16 on an interim basis pending a final hearing with the following
17 restrictions: First, the final hearing shall be held on
18 March 10th, 2014, at 9:30 a.m.

19 Second, the debtors' authorization to use cash collateral
20 pursuant to this interim order shall expire on March 10th
21 of 2014.

22 Third, the amount of cash collateral authorized to be used
23 during the interim period shall not exceed the total operating
24 disbursements in weeks 2 through 8 of the debtor's 13-week cash
25 flow projection budget.

1 Fourth, the replacement liens afforded to Cathay Bank shall
2 not extend to avoidance actions. Fifth, neither the debtor nor
3 any creditor committee is restricted from using cash collateral
4 to challenge perfection, validity, priority, amount, or
5 enforceability of any secured claim.

6 Counsel for the debtor will prepare the order. It will
7 modify the order that was uploaded with the motion. You will
8 circulate it for review by parties in interest who have
9 appeared at this hearing in connection with the -- as required
10 by our local rules.

11 That's my ruling with respect to the cash collateral
12 motion. Next up is the utilities motion. We took the
13 utilities motion and heard argument this morning.

14 We trailed the decision with respect to the utilities
15 motion until we resolved the question of cash collateral and
16 debtor-in-possession financing. As the debtor is now
17 authorized to cash collateral, USA's utility motion is also
18 granted.

19 Counsel, you will prepare -- debtors' counsel will prepare
20 the appropriate order and again will comply with local rules.

21 That takes us to debtor-in-possession financing. The
22 debtor-in-possession financing motions are difficult. The
23 debtors have proven that they are unable to obtain secured
24 credit under Section 503(b) (1).

25 As a result, the Court may authorize obtaining credit in

1 certain circumstances established by the code under 364(c)(2)
2 and (c)(3).

3 More particularly, the proof that was submitted in the
4 form of the declarations show that the debtor has talked to
5 numerous -- 20 or more -- proposed lenders who are not willing
6 to lend and the parent refused to lend interest free. So the
7 question then becomes, well, can we, in fact, borrow money on a
8 postpetition basis.

9 Pursuant to 11, USC, Section 364(c)(2), you can borrow
10 money -- the debtors could -- secured by a lien on property of
11 the estate that is not otherwise subject to a lien.

12 The problem here is Cathay has a primary lien on all of the
13 assets, so that section isn't available to allow the debtors to
14 borrow money on a postpetition basis which leaves us only with
15 Section 364(c)(3), obtaining secured credit in the form of a
16 junior lien on property of the estate that is subject to a
17 lien. That has to be the focus of what we're talking about in
18 this particular instance under the facts before the Court.

19 The elements with respect to obtaining Section 364(c)(3)
20 financing are as follows: First, the relief sought must be
21 necessary, essential, and appropriate. This is the debtors'
22 burden.

23 Based on the hearing this morning, it is not clear that
24 this is necessary. And when I say this, I'm talking about
25 postpetition financing.

1 The Aurora project funds are not included in the budget.
2 As a result, this Court is unable to say that, in fact,
3 borrowing money is necessary if perhaps -- and the Court simply
4 doesn't know because there's a pilosity of evidence -- the
5 Aurora project funds are sufficient to provide financing for
6 some or all of the debtor's needs postpetition. It is not
7 clear that it was appropriate either. The budget isn't
8 accurate.

9 With the admission of the Aurora revenues, the Court is
10 left in a quandary. And, candidly, I think counsel for
11 Cathay Bank said it best. I'm confused.

12 Second, the best interest of the estate. It may or may not
13 be in the best interest of the estate to allow borrowing under
14 the terms that are proposed by the debtor's motions here.

15 Again, it's almost impossible without knowing the financial
16 condition and wherewithal of Debtor Aurora to determine
17 whether, in fact, it's in the best interest of the estate.

18 Third, the terms and conditions are reasonable. The
19 debtors did a good job here. The terms are not unreasonable.
20 And, fourth, the loan agreement was negotiated in good faith
21 and at arm's length.

22 Here, the lien -- or excuse me -- the debtor in possession
23 proposed financing was negotiated with a parent who had
24 previously lent money to the subsidiary with no interest. It's
25 not clear that the negotiations were at arm's length given the

1 current parent/subsidiary relationship.

2 It's also a question as to the good faith given the absence
3 of financial information with respect to Debtor Aurora and its
4 financial condition.

5 The four factors that I've identified for you are laid out
6 in in re World Com, Inc., (phonetic) 2002 Westlaw 1732646 at
7 star 3 (phonetic), out of the Southern District of New York
8 in 2002. You can also look at Mid-State Raceway, Inc.,
9 323 Bankruptcy Reporter 40 at 60 out of the bankruptcy court
10 for the Northern District of New York in 2005.

11 As a result when you consider each of the four factors that
12 are required to authorize and permit there to be postpetition
13 financing pursuant to Section 364(c)(3), I find that the debtor
14 has failed to carry its burden of establishing that it is
15 entitled to such financing in this particular case.

16 This is an interim finding. It is without prejudice to the
17 debtors' ability to renew the motion and seek a final order
18 with respect to debtor-in-possession financing at a future
19 time. And if the debtor chooses to pursue such an avenue, the
20 March 10 hearing date would be available.

21 It leaves us then with the question regarding the motion
22 for a temporary restraining order. Here the plaintiffs
23 requested that Defendant Cathay Bank be enjoined from
24 prosecuting a lawsuit denominated Case No. SC-121853 (phonetic)
25 -- I'll call that the state court action -- in the

1 Superior Court of California for the County of Los Angeles in
2 the Western District.

3 More specifically, the plaintiffs seek to prevent Cathay
4 from taking action against nondebtor guarantors on a debt owed
5 by the plaintiffs to Cathay.

6 The guarantors, Martifer Solar, Inc., and Martifer Solar
7 USA, are corporate parents and proposed postpetition are debtor
8 in possession lenders to the plaintiffs.

9 Essentially, Plaintiffs argue that the guarantors will not
10 be able to defend themselves in the state court action while
11 simultaneously providing financial support during the
12 plaintiffs' reorganization.

13 According to the plaintiffs' complaint and the TRO motion,
14 a prerequisite of the guarantors debtor-in-possession financing
15 is the granting of a stay of the state court action against
16 them.

17 Thus, the requested relief in the TRO motion is dependant
18 on the ruling regarding the plaintiffs' motion for an order
19 authorizing debtors to obtain postpetition financing.

20 Since the Court has denied the plaintiffs' postpetition
21 financing motions without prejudice, the Court will also deny
22 the TRO motion without prejudice.

23 More specifically, the Court finds the plaintiffs have
24 failed to carry their burden for a preliminary injunction. The
25 standard for granting a preliminary injunction balances a

1 plaintiff's likelihood of success against the relative hardship
2 to the parties.

3 The Ninth Circuit has recognized two different sets of
4 criteria for preliminary injunctive relief. Under the
5 traditional test, a plaintiff must show, first, a strong
6 likelihood of success on the merits, second, the possibility of
7 irreparable injury to Plaintiff if preliminary relief is not
8 granted, third, the balance of hardships favoring the
9 plaintiffs, and, fourth, the advancement of the public interest
10 in certain cases.

11 The alternative test requires a plaintiff demonstrate
12 either a combination of probable success on the merits and the
13 possibility of irreparable injury or that serious questions are
14 raised and the balance of hardships tips sharply in its favor.

15 These two formulations represent two points on a sliding
16 scale in which the required degree of irreparable harm
17 increases as the probability of success decreases.

18 They are not separate tests, but rather outer reaches of a
19 single continuum. You can read *Taylor versus Westly*,
20 488 F .3d 1197 at 1200, Ninth Circuit, 2007.

21 As to the plaintiffs' likelihood or probability of success,
22 the record is deficient regarding successful reorganization.
23 The plaintiffs assert that they have one impaired consenting
24 creditor, General Freight Service, LLC, are planning to pay
25 Cathay in full, and are anticipating business that will allow

1 them to prosper in the future if given the opportunity.

2 These few assertions even if taken as true do not weigh in
3 favor of the plaintiffs when viewing the holes in the record.
4 At this juncture of the case -- and we are at the first-day
5 stage -- there are no schedules providing specific information
6 on the plaintiffs' finances to gain perspectives as to
7 liabilities and assets.

8 The only financial document the Court has on record is a
9 13-week cash flow projection for USA which does not include any
10 income from Aurora and shows a significant loss of
11 net-operating cash flow when eliminating the denied DIP
12 financing.

13 Based on the limited information available at this time,
14 the Court cannot begin to evaluate the chances of Plaintiffs'
15 successful reorganization and therefore the element of success
16 weighs against the requested relief.

17 Regarding the possibility of irreparable harm, there has
18 been insufficient showing of imminent action in the state court
19 action or steps to attach the assets of guarantors.

20 In addition, the plaintiffs' allegations that the
21 guarantors must choose between two forums is not an irreparable
22 harm because the Court has denied the DIP financing and so any
23 contribution to the plaintiffs would be voluntary.

24 Based on the available information, the status quo will
25 remain the same in the state court action for the time being.

1 Inconsistency of judgment has not been shown to be an issue
2 because Plaintiffs acknowledge that their obligation to Cathay
3 is 6.4 million dollars. And even if held responsible for
4 indemnification, this is the amount that would be owed to the
5 guarantors.

6 The costs of the guarantors' defense in the state court
7 action have not been estimated or projected, and so the record
8 is deficient as to whether or not those expenses would result
9 in the defeat of a reorganization effort. There's been no
10 demonstration of risk to property or rights that cannot be
11 remedied.

12 The balance of hardships does not favor the plaintiffs
13 because they have been permitted to use cash collateral
14 mitigating the risk of an imminent shutdown of operations. The
15 plaintiffs have an opportunity to move for DIP financing
16 approval in the future if it becomes necessary.

17 Preventing Cathay from pursuing its rights against
18 nondebtor guarantors does create a hardship that the Court
19 acknowledges. However, the public interest is served by
20 reorganization through maximized payment to creditors and
21 preservation of businesses and jobs.

22 Bankruptcy code protection, however, is extended to
23 debtors, and guarantors here are not debtors. The plaintiffs'
24 argument for preventing Cathay from pursuing its rights against
25 the nondebtor guarantors is not persuasive. This factor is

1 neutral in the preliminary-injunction analysis.

2 The question presented through the TRO motion are not
3 serious in that they are common in bankruptcy, funding issues
4 and litigation to enforce debts. The balance of hardships as
5 previously noted does not tip strongly in favor of the
6 plaintiffs.

7 When viewed as a whole under the four-factor test, the
8 plaintiffs have not met their burden at this juncture for a
9 preliminary injunction.

10 In addition, considering the sliding scale of harm and
11 success or serious questions of hardships a temporary
12 restraining order enjoining the bank is not warranted at this
13 time.

14 Therefore, the TRO motion is denied without prejudice, and
15 that is the Court's ruling with respect to the final matter
16 before it. Those will be the Court's orders.

17 With respect to the orders regarding debtor-in-possession
18 financing and the TRO, the way that we do it in this district,
19 Counsel, is the prevailing party prepares the proposed orders.

20 As a result with respect to the motions for
21 debtor-in-possession financing and for the TRO, counsel for
22 Cathay Bank is directed to draft the appropriate orders, comply
23 with the local rules regarding circulation, and upload them for
24 the Court to enter.

25 With that, there being nothing further pending before the

1 Court at this point in time, I think we've made it all the way
2 through all of the first-day motions that were filed within the
3 last roughly 96 hours in this district.

4 The parties at this point in time should have a sense of
5 the direction that the case can go and whether or not they need
6 to take appropriate action in the future.

7 I'm sure you know how to find me, and I'm sure you know how
8 to get the Court's attention in the event that there are
9 subsequent hearings that we need to address.

10 MR. WADDELL: Question --

11 THE COURT: Counsel?

12 MR. WADDELL: -- your Honor. Did the Court -- well,
13 the Court didn't make any -- or read any finding --

14 THE COURT RECORDER: I'm sorry. Would you state your
15 appearance, please.

16 MR. WADDELL: Oh, sorry. Reed Waddell,
17 Franzel Robins Bloom & Csato on behalf of Cathay Bank. Did the
18 Court draw any distinction between the money that was deposited
19 in the California Bank & Trust account which was a claim of not
20 property of the estate and the collections that come in for
21 legacy collections or otherwise to the debtor?

22 THE COURT: No.

23 MR. WADDELL: Thank you.

24 THE COURT: Anything further? Ms. Axelrod.

25 MS. AXELROD: Your Honor, I promised you earlier

1 today a preview of what would be coming forward prior to the
2 next omnibus hearing date that the debtor finds the need to
3 file.

4 One will be, you know, either a renewed motion or a motion
5 for reconsideration to set forth the Aurora evidence for the
6 Court.

7 And we apologize and it will be, of course, you know, in
8 the moving papers, but it did not push the needle in
9 materiality, so we'll get that for the Court.

10 THE COURT: Okay.

11 MS. AXELROD: I did have one question regarding the
12 DIP financing for USA because it was filed in that separate
13 case and just adopt the findings as to Aurora regarding the
14 necessity that the Court made?

15 THE COURT: Run that by me again, Counsel. I'm
16 sorry. I lost track of what you were trying to get you me to
17 do for you.

18 MS. AXELROD: Sure, your Honor. When you were
19 reading your findings when it came to the DIP financing --

20 THE COURT: Um-h'm.

21 MS. AXELROD: -- the Court had mentioned Aurora
22 specifically and that lack of financial information dealing
23 with Aurora but had not mentioned regarding the USA. And just
24 for my clarity that it was -- should I adopt it to both of the
25 cases, your Honor?

1 THE COURT: Yes.

2 MS. AXELROD: And then will be coming up, your Honor,
3 is the wage motion since that is a necessity that we will be
4 filing, and we anticipate to file that in the next day.

5 THE COURT: Okay.

6 MS. AXELROD: And then we also have for new
7 construction we'll be filing a procedures motion on how to deal
8 with contracts going forward and doing it more as a global
9 procedure to be approved by the Court and for parties in
10 interest to weigh in.

11 THE COURT: Very well, Counsel. Thank you for the
12 advance sort of foreshadowing. I think that's helpful. We'll
13 plan accordingly, and we'll be prepared in order to address the
14 needs of the debtors and parties in interest as those matters
15 come up.

16 We're at first-day motions here. I think we're at a point
17 now where probably things will become a little more clear with
18 respect to what needs to be done, but I'll leave that in your
19 capable hands.

20 MS. AXELROD: Thank you, your Honor.

21 THE COURT: Counsel?

22 MR. WADDELL: Your Honor, at the risk of asking for
23 an advisory opinion, do I need to file a pro hac vice
24 application for the adversary? Do you know? Does anybody here
25 know?

1 THE COURT: Counsel, the answer is is that if you
2 were admitted in the main case --

3 MR. WADDELL: That's what I thought.

4 THE COURT: -- I am confident that there will not be
5 a problem with respect to appearing in the adversary. That
6 having been said, out of an abundance of caution just do it.
7 It's easy and it will be granted in the ordinary course as the
8 one in the main case was I'm sure.

9 MR. WADDELL: That's fine. Thank you, your Honor.

10 THE COURT: Any other matters pending before the
11 Court at this time? Seeing none, we're adjourned.

12 THE CLERK: Thank you, your Honor.

13 All rise.

14 (Court concluded at 03:28:40 p.m.)

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1 I certify that the foregoing is a correct transcript
2 from the electronic sound recording of the proceedings in
3 the above-entitled matter.

4

5

6 /s/ Jennie Ellis

01/30/14

7 Jennie Ellis, Transcriptionist

_____ Date

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EXHIBIT 3

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20 Attorneys for Creditor
CATHAY BANK

21 **UNITED STATES BANKRUPTCY COURT**

22 **DISTRICT OF NEVADA**

23 IN RE:

24 MARTIFER AURORA SOLAR, LLC, a
Nevada limited liability company,

- 25 Affects Martifer Aurora Solar, LLC
26 Affects Martifer Solar USA, Inc.
27 Affects All Debtors

Case No. BK-S-14-10355-abl
and BK-S-14-10357-abl

Jointly Administered under
Case No. BK-S-14-10355-abl

Chapter 11

28 **[PROPOSED] ORDER RE:**

1580756_2 (7479-14)

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**DEBTORS' MOTION FOR INTERIM
AND FINAL ORDER PURSUANT TO
11 U.S.C. §§ 361, 362 AND 363 AND
FED. R. BANKR. P. 4001(b) and
4001(d): (I) AUTHORIZING
DEBTORS TO USE CASH
COLLATERAL AND PROVIDE
ADEQUATE PROTECTION; (III)
GRANTING RELATED RELIEF;
AND (III) SCHEDULING FINAL
HEARING**

7 The Court, having reviewed and considered Debtor Martifer Aurora Solar, LLC's Motion
 8 for Interim and Final Order Pursuant To 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P.
 9 4001(b) and 4001(d): (I) Authorizing Debtors To Use Cash Collateral and Provide Adequate
 10 Protection; (III) Granting Related Relief; and (III) Scheduling Final Hearing [Dkt. 25] and
 11 Debtor Martifer Solar USA, Inc.'s Motion for Interim and Final Order Pursuant To 11 U.S.C. §§
 12 361, 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing Debtors To Use
 13 Cash Collateral and Provide Adequate Protection; (III) Granting Related Relief; and (III)
 14 Scheduling Final Hearing [Dkt. 24] (collectively the "Motions"), all other papers and pleadings
 15 and evidence submitted in connection with the Motions, the oral arguments of counsel at the
 16 hearing held on January 28, 2014, with appearances as noted in the record and with all other
 17 findings set forth in the record at the hearing incorporated herein, pursuant to Fed. R. Civ. P. 52,
 18 made applicable to these proceedings by Fed. R. Bankr. P. 7052; and for good cause appearing
 19 therefore:

20 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Motions are
 21 granted in part, on an interim basis, pending a final hearing of the Court and with the following
 22 restrictions:

- 23 1. The final hearing shall be held on March 10th, 2014, at 9:30 a.m.;
- 24 2. The debtors' authorization to use cash collateral pursuant to this interim order
 25 shall expire on March 10, 2014;
- 26 3. The amount of cash collateral authorized to be used by the Debtors during the
 27 interim period shall not exceed the total operating disbursements in weeks 2 through 8 of the
 28

1 debtor's 13-week cash flow projection budget found at [Dkt. 24, Exhibit 2 and Dkt. 25, Exhibit
 2], a true and correct copy of which is attached hereto as **Exhibit "A"** and incorporated herein by
 3 reference ("Budget");

4 4. As partial adequate protection for the use of Cathay Bank's cash collateral, Cathay
 5 Bank shall be granted a replacement lien in the Debtor's post-petition assets to secure any
 6 diminution in value of Cathay Bank's secured claim caused by the Debtors' use of Cathay Bank's
 7 cash collateral in accordance herewith; the replacement liens afforded to Cathay Bank shall not
 8 extend to avoidance actions;

9 5. As partial adequate protection for the use of Cathay Bank's cash collateral, Cathay
 10 Bank shall be granted a super-priority administrative claim as additional security for any
 11 diminution in value of Cathay Bank's secured claim cause by the Debtor's use of Cathay Bank's
 12 cash collateral in accordance herewith;

13 6. As partial adequate protection for the use of Cathay Bank's cash collateral, the
 14 Debtors shall make the interest payments to Cathay Bank set forth in the Budget which are
 15 reflected as due during weeks 2 – 8 of the Budget;

16 7. Neither the debtor nor any creditor committee is restricted from using cash
 17 collateral to challenge perfection, validity, priority, amount, or enforceability of any secured
 18 claim; and

19 8. All findings of fact and conclusions of law set forth in the record with respect to
 20 this interim order are interim and all parties shall have the right to challenge these finding and
 21 conclusions for purposes of the hearing on the final order.

22 **IT IS SO ORDERED.**

23 Submitted by,

24 By: _____

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12 *Attorneys for Creditor*
13 *Cathay Bank*

14 **APPROVED/DISAPPROVED:**

15 **APPROVED/DISAPPROVED:**

16 By: _____

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26 *[Proposed] Counsel for Martifer Solar*
27 *USA, Inc. and Martifer Aurora Solar, LLC*

28 By: /s/ J. Michal Bloom, Esq.

29 J. MICHAL BLOOM, ESQ.
30 Nevada Bar No. 004706
31 **UNITED STATES DEPARTMENT OF**
32 **JUSTICE**
33 Office of the United States Trustee
34 300 Las Vegas Boulevard, So., Suite 4300
35 Las Vegas, Nevada 89101

36 *Attorneys for the United States Trustee*
37 *for Region 17, Tracy Hope Davis*

38 **APPROVED/DISAPPROVED:**

39 By: _____

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46 *Attorneys for Interested Party Martifer*
47 *Solar, Inc.*

1 LR 9021(c) Certification:

2 In accordance with LR 9021, counsel submitting this document certifies that the order
3 accurately reflects the court's ruling and that (check one):

4 _____ The court has waived the requirement set forth in LR 9021(b)(1).

5 _____ No party appeared at the hearing or filed an objection to the motion.

6 X I have delivered a copy of this proposed order to all counsel who appeared at the
7 hearing, and each has approved or disapproved the order, or failed to respond, as
indicated below:

8 J. Michal Bloom, Esq.
9 *Trial Attorney for Acting U.S. Trustee,*
10 *Tracy Hope Davis*

Samuel A. Schwartz, Esq.
The Schwartz Law Firm, Inc.
Attorneys for Interested Party Martifer Solar, Inc.

11 Micaela Rustia Moore, Esq.
12 Fox Rothschild LLP

13 *[Proposed] Counsel for Martifer Solar USA, Inc. and Martifer Aurora Solar, LLC*

14 _____
15 I certify that this is a case under Chapter 7 or 13, that I have served a copy of this
16 order with the motion pursuant to LR 9014(g), and that no party has objected to
17 the form or content of the order.

18 # # #